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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 11

CENTRAL KENTUCKY NATURAL GAS COMPANY,
APPELLANT,

v.

RAILROAD COMMISSION OF KENTUCKY, ET AL.,
APPELLEES.

OBJECTIONS OF APPELLANT TO MOTION TO QUASH CITATION AND DISMISS APPEAL, WITH COUNTER AFFIDAVIT AND BRIEF

The appellant, Central Kentucky Natural Gas Company, objects to the motion filed herein by Highnight, et al., to quash the citation and dismiss the appeal, on the following grounds:

1. That upon appeal from a district court to the Supreme Court the statute directs the signing of citation by the "district court, or by a justice of the Supreme Court."

2. Movents had no separate standing which would have entitled them to appeal from the decree of the lower court.

3. The petition for appeal and the order allowing same were all inclusive as to parties.

4. The jurisdiction of this Court is not affected by the fact that a citation is not issued during the period allowed for appeal.

ARGUMENT

I.

1. That upon appeal from a district court to the Supreme Court the statute directs the signing of citation by the "district court, or by a justice of the Supreme Court."

Section 999, U. S. Revised Statutes (28 U. S. C. A., §868) provides that:

> "When a writ of error is issued by the Supreme Court to * * * a district court, the citation shall be signed by a judge of such * * * district court, or by a justice of the Supreme Court, * * *."

NOTE: Appeal substituted for writ of error, 28 U. S. C. A., §-861*a*.

This statutory provision disposes of the motion to quash the citation on the ground that it issued out of the district court.

II.

2. Movents had no separate standing which would have entitled them to appeal from the decree of the lower court.

Even assuming that these movents were actually intervening defendants they had no separate standing entitling them to appeal from the decree. *Chicago* v. *Chicago Rapid Transit Co.*, 284 U. S. 577.

Appellant also relies upon the authorities cited in its printed objections and brief to the motion to dismiss appeal filed herein on May 8, 1933.

In re Englehard & Sons Co., 231 U. S. 646, 647-651.
Smith v. *Illinois Bell Telephone Co.*, 270 U. S. 587, 592.
City of New York v. *Consolidated Gas Co.*, 253 U. S. 219, 220.

City of New York v. *New York Telephone Co.*, 261 U. S. 312, 315.

III.

3. The petition for appeal and the order allowing same were all inclusive as to parties

Both the petition for appeal (R. 102) and the order allowing the appeal (R. 108) were in the broadest possible terms and necessarily included all parties in interest. Neither the petition nor the order was limited to particular defendants. The Court in directing the issuance of the citation so construed said petition and order.

IV.

4. The jurisdiction of this Court is not affected by the fact that a citation is not issued during the period allowed for appeal

Citation may issue after the expiration of the period allowed for appeal, and the citation here in question was properly issued by the trial court. The issuance of a citation is a ministerial act and not a judicial function.

In *Mendenhall* v. *Hall*, 134 U. S. 559, 567-568, the court said:

> "Our jurisdiction did not depend upon a citation being issued *Evans* v. *State Bank, ante*, 330, although we could not properly proceed to hear the case until Charles F. Hall, as to whom the suit was dismissed in 1885, or his representative, was brought into court by citation."

In *Osage Oil & Refining Co.* v. *Mulber Oil Co.*, 38 F. (2d.) 396, 398, the Circuit Court of Appeals for the Tenth Circuit, said:

> "When jurisdiction of this Court has attached, another rule comes into play. The leading case on the

subject is *Lockman* v. *Lang* (8 C. C. A.) 132 F. 1, 4. Therein Judge Sanborn lays down the rule as follows:

'A citation to appear at the hearing in the appellate court is not jurisdictional in its nature. Its only purpose is to give notice to the appellees that the appeal will be prosecuted, so that they may appear and have a hearing if they desire. It is a part of the procedure prescribed not to give jurisdiction to the appellate court, but to secure to the appellees a fair opportunity to present to that court their arguments in support of the decision below. If, through accident or mistake, the citation has been omitted, and no notice has been given to the appellees of the hearing, the appellate court has ample power to direct its issue and to continue the case until reasonable notice of the hearing has been given. But it may not dismiss an appeal, which is a matter of right, and which is duly allowed by the trial court by the mere acceptance of security for its prosecution (*Simpson* v. *First National Bank* (C. C. A.) 129 F. 257, 260), until an opportunity to give the requisite notice has been furnished, whether the application for the citation is made before or after the statutory time for the appeal has elapsed (*Dodge* v. *Knowles,* 114 U. S. 436, 438, 5 S. Ct. 1108, 29 L. Ed. 144 (296); *Hewitt* v. *Filbert,* 116 U. S. 142, 144, 6 S. Ct. 319, 29 L. Ed. 581; *Mattingly* v. *Railroad Co.,* 158 U. S. 53, 56, 15 S. Ct. 725, 39 L. Ed 894; *Evans* v. *State Bank,* 134 U. S. 330, 331, 10 S. Ct. 493, 33 L. Ed. 917; *Altenberg* v. *Grant,* 28 C. C. A. 244, 246, 83 F. 980, 982; *Railroad Equipment Co.* v. *Southern Ry. Co.,* 34 C. C. A. 519, 522, 92 F. 541, 544).

There is a limitation of time within which such alias citation may issue, but it is not the statutory time for appeal; the time limit is 'before the end of the next ensuing term of this court.' *Jacobs* v. *George,* 150 U. S. 415, 14 S. Ct. 159, 160, 37 L. Ed. 1127. The present rules of this court and the Supreme Court require that the citation must be served 'before the return day' (S. C. Rule 10, 10th C. C. A. Rule 13); the Supreme Court rule in effect, when the case of *Jacobs* v. *George*

was decided, provided that citation must be served before the first day of the ensuing term (S. C. Rules of 1884, 8). Notwithstanding, the Supreme Court and the Court of Appeals for the Eighth Circuit held that others could be joined as appellees within the next ensuing term of the court. This circuit has also so held. *Werner, Harris & Buck* v. *Equitable Trust Co.*, 33 F. (2d) 1023.' "

In *Nome & Sinook Co.* v. *Ames Mercantile Co.*, 187 F. 928, 929, the Circuit Court of Appeals for the Ninth Circuit said:

"Not being jurisdictional, if defective, a new citation may be taken out if necessary (*Shute* v. *Keyser*, 149 U. S. 649, 37 L. Ed. 884); and the mere fact that a citation is not issued until after the time limited for taking the appeal has expired does not defeat jurisdiction of the appellate court."

In *Mattingly* v. *The North Western Virginia Railroad Company*, 158 U. S. 53, 56. In this case the Court speaking through Chief Justice Fuller said:

"It is true that the citation was not signed until April 14, 1891, and not served until the 17th of the month, but neither the signing nor the service of the citation was jurisdictional, its only office being to give notice to the appellee."

In *Jacobs* v. *George*, 150 U. S. 414, the Court entered the following opinion:

"The Chief Justice: Judgment in this case was rendered by the Supreme Court of the territory of Arizona, January 19, 1889, that the judgment of the court below under review by that court be reversed and the complaint dismissed with costs.

January 13, 1890, being one of the days of the next regular term of the court, an appeal was prayed to this court, the appeal was allowed January 14, 1890, the required bond was approved and filed, and the record

was filed here, March 14, 1890, at October term, 1889. No citation was issued and served, nor has any appearance for appellee been entered, nor is any waiver of citation shown.

It must be regarded as settled that: (1) Where an appeal is allowed in open court, and perfected during the term at which the decree or judgment appealed from was rendered, no citation is necessary; (2) Where the appeal is allowed at the term of the decree or judgment but not perfected until after the term, a citation is necessary to bring in the parties, *but if the appeal be docketed here at our next ensuing term, or the record reaches the clerk's hands seasonably for that term, and legal excuse exists for lack of docketing, a citation may be issued by leave of this court, although the time for taking the appeal has elapsed;* (3) Where the appeal is allowed at a term subsequently to that of the decree or judgment, a citation is necessary, but may be issued properly returnable, even after the expiration of the time for taking the appeal, if the allowance of the appeal were before; (4) But a citation is one of the necessary elements of an appeal taken after the term, and if it is not issued and served before the end of the next ensuing term of this court, and not waived, the appeal becomes inoperative. *Hewitt* v. *Filbert,* 116 U. S. 142 (29:581); *Richardson* v. *Green,* 130 U. S. 104 (32:872); *Evans* v. *State Nat. Bank of Orleans,* 134 U. S. 330 (33:917); *Green* v. *Elbert,* 137 U. S. 615 (34:792)."

In *Pooler* v. *Hyne,* 202 F. 194, 195, the Circuit Court for the Seventh Circuit said:

"The motions for dismissal of the appeal for want of jurisdiction are overruled. The decree appealed from in each case was entered December 21, 1911, and the trial court allowed the appeal and issued the citation June 18, 1912—after the term during which the decree was entered, but within 6 months from such entry. Although service of the citations upon the appellants was not obtained until June 24, 1912, the juris-

diction of this court is unaffected by the fact of such service after the expiration of the 6 months, *Dayton* v. *Lash,* 94 U. S. 112, 24 L. Ed. 33; *Jacobs* v. *George,* 150 U. S. 415, 14 Sup. Ct. 159, 37 L. Ed. 112. The various authorities cited in support of the motion—in reference either to writs of error or to appeals in other jurisdictions—are inapplicable to these appeals in equity under the federal practice, wherein jurisdiction of the cause is acquired upon allowance of the appeal. Citation of the appellees is needful only for the purpose of docketing the appeal for hearing when allowed without their presence, either actual or constructive. If allowed during the term, all parties are constructively present, and citation is not required; but allowance after the term entitled the appellees, in their absence, to service of citation before the appeal is docketed for hearing. So, the motion to dismiss for want of such service is without force. See In re *T. E. Hill Co.,* 148 Fed. 832, 78 C. C. A. 522."

In *Railroad Equipment Co.* v. *Southern Railway Co.,* 92 F. 541, 544, Sixth Circuit, Judge Taft, after quoting from the opinion in *Jacobs* v. *George,* 150 U. S. 415, *supra,* observed:

"The next ensuing term of this court, after the allowance of the appeal in this case, was the present term, that of October, 1898, which will not end until October, 1899. There is still time in which to issue a citation and bring in the East Tennessee, Virginia & Georgia Railway Company before the end of this term. *Altenberg* v. *Grant,* 54 U. S. App. 312, 28 C. C. A. 244, and 83 Fed. 980."

In *Martin* v. *Burford,* 176 F. 554, 555 (Ninth Circuit), the Court discussed the matter of amendment under Section 1005 Revised Statute as distinguished from the issuance of a citation, as follows:

"But this rule of amendment does not apply to the citation, which is a notice to the adverse party or parties to appear in the appellate court and show cause

why a judgment should not be corrected. In such case all parties in whose favor the judgment is rendered must have notice. The notice may be waived; but if not waived, and the defendants in error are not served with notice, either personally or by their attorney, they have not been brought within the jurisdiction of the court. *The proper practice in such case is to issue a new citation. Knickerbocker Life Ins. Co.* v. *Pendleton, supra; Jacobs* v. *George,* 150 U. S. 415, 14 Sup. Ct. 159, 37 L. Ed. 1127; *Atlenberg* v. *Grant,* 83 Fed. 980, 28 C. C. A. 244.

Let a new citation issue in this case, to be served upon the attorneys of record representing the defendants in error in the court below, *or the attorneys who have appeared specially in this court, or upon all the parties in whose favor the judgment was entered.*"

In *Berliner Gramophone Co.* v. *Seaman,* 108 F. 714, 717, the Circuit Court of Appeals for the Fourth Circuit, after reviewing the authorities, said:

> "It appearing in this case that a citation has been issued before the term ensuing next after the entry of the order appealed from, the court has jurisdiction, notwithstanding that the citation was issued more than 30 days after the date of the order. The motion to strike the case from the docket is refused."

See also, *Noonan* v. *Chester Park Athletic Club Co.,* 93 F. 576 (Sixth Circuit); *Weinstein* v. *Black Diamond B. S. Corporation,* 31 F. (2d), 519 (Second Circuit). *Rector* v. *Alcorn,* 204 F. 748 (Fifth Circuit).

Reply to Movents' Brief.

1. This Court did not hold by its order of May 9, 1933, that the movents were necessary parties. Appellant contends that while said movents may be proper parties, they are not necessary parties. If considered actual parties to this suit in the court below, movents were not independent parties. They became intervenors subject to the

right of the City of Lexington and S. B. Featherston for himself and other consumers to direct the litigation. The petition for permission to intervene asked for leave to intervene for the purpose of aiding the City and Featherston as the principal defendants.

2. No award has been made by the Railroad Commission to any gas consumer. The Commission's order merely fixed the rate for gas service. An award under the statute (Section 201e—17, Kentucky Statutes) consists of a specific allowance to an applicant against the utility for a specified sum previously collected as an excessive charge. No such proceeding has ever been instituted before the Railroad Commission against appellant, nor has any order of that character been entered.

3. Counsel for movents cite a number of cases involving appeals by a defendant where a joint judgment was rendered against such defendant and others. In such cases all of the joint defendants are necessary parties appellant in the absence of summons and severance. These cases have no application to the question here raised.

4. While this Court could properly issue a citation as against said movents, this could also be done by the court below.

5. The statement attributed to Judge Hickenlooper on page seven of the printed motion and brief is incorrect. The order of the Statutory Court entered May 17, 1933, directing the issuance of the citation was concurred in and signed by all three members.

6. Subsequent to the issuance of the citation to movents by the court below, notice was served on their attorney and copy of the assignment of errors and the portions of the record filed herein and considered by appellant as essential to the appeal furnished him, which notice after ac-

ceptance was filed with the Clerk of this Court on July 14, 1933, and copy of which is printed as an Appendix hereto.

Said movents have made no effort to add to the record. Appellant does not consider that the burden is upon it to bring into this record any additional portions unless specified in praecipe filed by the movents as essential to the appeal.

7. The franchise contract is between the company and the city, the latter representing all consumers having any interest thereunder. The city is not a nominal but an actual and real party in interest, as well as a representative party.

In an appeal from a judgment denying the injunction against the Commission which ordered the rate, the individuals affected by the rate order were not necessary parties to the appeal even though they were permitted to intervene. This is so because the injunction was not and could not be granted against said individuals.

While the court below has by its order directed the distribution of a portion of the impounded fund to the consumers generally, said order did not determine the right of any particular consumer in said fund, and therefore individual consumers are not necessary parties to this appeal. The City of Lexington, with which the Franchise contract was made, and S. B. Featherston representing all other consumers were the only necessary parties as the rights of all consumers in said impounded fund are identical and may be fully heard and determined by this court without the presence as a nominal party here of any individual consumer.

Respectfully submitted,

HENRY T. DUNCAN,
DYKE L. HAZELRIGG,
CHESTER J. GERKIN,
Attorneys for Appellant.

October 9, 1933.

COUNTER AFFIDAVIT ON BEHALF OF APPELLANT IN RE MOTION AND AFFIDAVIT OF HIGHNIGHT, ET AL.

The affiant, T. J. Tonkin, Jr., states that he is a resident of the City of Lexington, and is Vice President of the Central Kentucky Natural Gas Company and as such has general executive charge and management of the business of said company.

Affiant says:

1. That Mrs. Wellington Payne died on July 21, 1932, and was not a gas consumer after April 7, 1927 nor has her estate any interest in the impounded fund in this case.

2. That H. E. Stevens died on June 5, 1933.

3. That Mrs. George Highnight did not become a gas consumer until March 12, 1931, and ceased to be such on September 4, 1931. At the time of the filing of the intervening petition in the court below on behalf of Mrs. George Highnight she was not a gas consumer.

4. That Anna Mae Hollinger has not been a gas consumer since August 1, 1927, and has no interest in the fund impounded during the pendency of this cause, and she was not a gas consumer at the time the petition on her behalf to intervene was filed in the court below.

5. That Mrs. Gladys Berkley has not been a gas consumer since March 8, 1928, and was not at the time of the filing of the intervening petition in the court below to make her a party defendant, and she has no interest in the fund impounded during the pendency of this cause.

6. That Mrs. Margaret Taylor has not been a gas consumer since June 24, 1929; and was not at the time of the filing of the petition on her behalf in the court below to make her a party defendant, and she has no interest in the fund impounded during the pendency of this cause.

7. That J. W. Delph has not been a gas consumer since September 14, 1931, and was not at the time the motion was made herein on his behalf.

8. That the share or interest to date of the following movents in the fund impounded during the pendency of this cause under the rate found by the court to be reasonable is as follows:

R. T. Childers	$33.50
J. W. Delph	6.30
S. W. Dearborn	15.30
William Dearborn	18.30
P. P. O'Neill	22.60

9. That the former franchise of Central Kentucky Natural Gas Company in the City of Lexington expired on September 5, 1925; that thereafter J. A. Edge, appearing of counsel herein for certain movents, made diligent and persistent effort to create the impression that corrupt relations existed between the officials of the City of Lexington and its attorneys and the company and its attorneys, and that there was danger of a franchise being granted on terms that would not properly protect the interests of the gas consumers. At the request of the Directors of the Board of Commerce of Lexington, Kentucky, representing the various business and commercial organizations of said city, the officials of the City of Lexington in December 1926 employed the Honorable Robert H. Winn, Attorney at Law of Mt. Sterling, Kentucky, and a former member of the Court of Appeals of Kentucky, as special counsel to represent the

city and the gas consumers in all negotiations and proceedings in connection with the granting of a franchise and the fixation of rates thereunder; that said attorney occupies the highest standing as a member of the bar in the State of Kentucky, and that subsequent to the employment of Judge Winn the gas consumers of Lexington have been entirely satisfied with his handling of all matters concerning the rate controversy.

That the said J. A. Edge has been active in local politics in the City of Lexington during the pendency of the negotiations for a new gas franchise and controversy over the rate to be charged for gas service, and has constantly used the charge of collusion between the city and company for political purposes.

Further responding to the affidavit of movents affiant says:

(*a*) Referring to paragraph 3, that the so-called Gas Consumers' League is not a legal entity, was not a party to and did not participate as such in all or any of the proceedings in this case.

(*b*) Referring to paragraph 4, there has never existed at any time any "interlocking conditions" or inter-corporate affiliations of any kind between the appellant and any power or utility company in Lexington; or with the governmental, political or financial organizations in said city.

(*c*) Referring to paragraph 5, no negotiations between the company and the officials of the city were ever held behind closed or locked doors, nor was the public or newspaper men excluded therefrom; that on the contrary all negotiations were open and public and fully reported in the Lexington newspapers.

(*d*) Referring to paragraph 10, the city never prepared or enacted a franchise contemplating any rate in excess of

60 cents, or providing for a pressure below the usual point of usefulness in cold weather.

(*e*) Referring to paragraph 24, said Railroad Commission never made any award to any complainant in said proceeding, but merely fixed a rate.

Witness the hand of this affiant, T. J. Tonkin, Jr., this 4th day of October, 1933.

(Sgd.) T. J. TONKIN, JR.

Subscribed and sworn to before me, a Notary Public, whose commission expires on the 4th day of April, 1934, this 4th day of October, 1933.

[SEAL.] (Sgd.) H. T. DUNCAN, JR.,
Notary Public, Fayette County, Ky.

APPENDIX

IN THE

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

In Equity, No. 578

CENTRAL KENTUCKY NATURAL GAS COMPANY,
Plaintiff,

v.

RAILROAD COMMISSION OF KENTUCKY, ET AL.,
Defendants.

Notice

To:

Mrs. George Highnight, Mrs. Wellington Payne, Mrs. Anna Mae Hollinger, Mrs. Gladys Berkley, J. W. Delph, Stanley Dearborn, William Dearborn, P. P. O'Neill, Mrs. Margaret Taylor, R. T. Childers, Nancy Bell Henderson and H. E. Stevens, individually and as representing any and all other gas consumers of the City of Lexington associated with them, including all gas consumers who may be associated with them under the name of Gas Consumers League of Lexington, Kentucky, or otherwise, and J. A. Edge, Attorney for said parties:

1. That on December 20, 1932, the plaintiff, Central Kentucky Natural Gas Company, filed with the Judges of the Statutory Court sitting in the above styled action its Petition for Appeal, and Assignment of Errors; that on the same day the Judges of said court entered an order allowing said appeal; that on the same day a supersedeas bond was duly executed and approved by said Judges.

2. That on December 20, 1932, the said Central Kentucky Natural Gas Company, appellant, filed in the office of the clerk of said Statutory Court its Statement of Jurisdiction.

3. Pursuant to Rule 12, paragraph 2, Rules of the Supreme Court of the United States, you are hereby served with copies of the aforesaid Petition for Appeal, Order

Allowing Appeal, Order Approving Supersedeas Bond, Assignments of Error, and Statement as to Jurisdiction in the above entitled cause. Your attention is directed to the provisions of Rule 12, paragraph 3, of the aforesaid Rules of the Supreme Court of the United States, which said paragraph reads as follows:

> "3. Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by the appellant. There may be included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3."

4. That on the 16th day of January, 1933, the above named plaintiff filed in the office of the clerk of the Court in the above styled action, its Præcipe for a transcript of the record to be filed in the Supreme Court of the United States pursuant to the appeal allowed in the above-entitled cause entered by said court on December 20, 1932. A copy of said Præcipe is filed herewith attached hereto marked "Exhibit A".

5. That on the 16th day of January, 1933, the said plaintiff lodged with the clerk of said court a "Condensed Statement of the Pleadings Before the Railroad Commission of Kentucky and Evidence Essential to Decision of Questions Presented on Appeal," a copy of which is attached hereto marked "Exhibit B".

6. That on the 31st day of January, 1933, there was lodged with the clerk of said court for and on behalf of the City of Lexington and certain other defendants, appellees, their Amendments to the plaintiff's Statement of Evidence, a copy of which is attached hereto marked "Exhibit C"; that as modified by the Judges of said court the said Statement of Evidence lodged on behalf of the plaintiff, Central Kentucky Natural Gas Company, as aforesaid, and the said Amendments thereto lodged by the defendants aforesaid

was duly approved by the Judges of said court and certified by them to be true, complete and properly prepared, and the same were thereafter filed with the clerk of said court on March 9, 1933.

7. That the clerk of said court thereafter made and certified a transcript of the record in said cause as required by said Præcipe and including the aforesaid Statement of Evidence and Amendments thereto, as approved by the Judges of said Court, and said transcript was duly filed with the clerk of the Supreme Court of the United States on the 15th day of March, 1933.

8. That on March 18, 1933, the appellant, Central Kentucky Natural Gas Company, filed with the clerk of said United States Supreme Court its "Statement of Points to be Relied upon and Designation of Parts of Record to be Printed", the same being fully set forth in the printed copy of the "Transcript of the Record" prepared by the clerk of the United States Supreme Court, a copy of which is hereto attached marked "Exhibit D".

9. That on March 27, 1933, the attorneys for the City of Lexington and others, appellees, filed with the clerk of the Supreme Court of the United States their designation of additional portions of the record and statement of the evidence which they desired to have printed. The same appears in said printed record above referred to, a copy of which is attached hereto marked "Exhibit D".

10. That on March 27, 1933, there was also filed with the clerk of the Supreme Court of the United States a Stipulation designating additional portions of said record to be printed as appears in the aforesaid printed record marked "Exhibit D".

11. That on March 31, 1933, there was also filed with the clerk of the Supreme Court of the United States a further Stipulation designating additional portions of said record to be printed as appears in the aforesaid printed record designated as "Exhibit D".

12. Your attention is called to the aforesaid printed copy of the "Transcript of Record" attached hereto marked

"Exhibit D" which sets forth fully and completely the record and Statement of Evidence and amendments thereto which were certified by the clerk of said statutory court sitting herein and caused to be printed by the Central Kentucky Natural Gas Company, appellant, and by the City of Lexington and others, appellees, and upon which this cause is sought to be heard and submitted before the United States Supreme Court.

13. You are further notified that on April 20, 1933, the appellant, Central Kentucky Natural Gas Company, filed its printed brief with the clerk of the United States Supreme Court; and you are further notified that on May 6, 1933, the said appellant, Central Kentucky Natural Gas Company, filed with the clerk of said Court its Reply Brief. Copies of said two briefs are attached hereto marked respectively "Exhibit E" and "Exhibit F".

14. You are further notified that the appellant is ready and willing to co-operate with you in having filed with the clerk of the Supreme Court of the United States at the earliest practicable date, and to have the same printed, pursuant to stipulation or other appropriate method, such additional portion or portions of the record and evidence as you may consider essential to the appeal (subject however, to the right of appellant to object to any portion or portions of the record or evidence designated by you as not being in fact essential to the appeal),—to the end that there may be no delay in the proper certification and printing of such additional portions of the record and evidence, and in order that there may be no delay in the hearing and submission of this cause in the United States Supreme Court.

HENRY T. DUNCAN,
D. L. HAZELRIGG,
CHESTER J. GERKIN,
Attorneys for Central Kentucky Natural Gas Company, Appellant.

Dated, Lexington, Kentucky, July 11, 1933.

Service is hereby accepted of the foregoing notice, together with copies of the papers and exhibits therein referred to.

This 11th day of July, 1933.

J. A. EDGE,
Attorney for Mrs. George Highnight and others.